B.C. Acquisitions, Inc., d/b/a Branch Cheese *and* Mary Lou Thompson, Petitioner and Drivers, Warehouse and Dairy Employees Union, Local No. 75, affiliated with the International Brotherhood of Teamsters, AFL–CIO.[1] Case 30–RD–1036

April 23, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 23, 1991, the Regional Director for Region 30 issued his Decision and Order in the above-entitled proceeding, in which he dismissed the petition finding that a contract bar exists. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision on the ground that substantial issues are raised as to his finding that a contract bar exists.

By order dated October 31, 1991, the Board granted the request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding with respect to the issue under review, and makes the following findings:

The Union was certified as the collective-bargaining representative in a unit of the Employer's production employees on June 29, 1990. Thereafter the parties commenced collective-bargaining for an agreement. The Union submitted its initial proposal in July. After further negotiations, the Employer presented a ''final contract proposal'' to the Union by mail on October 12, 1990. The proposal was a complete collective-bargaining agreement which would, if accepted, have run from July 1, 1990, to June 30, 1993, and which provided a wage reopener in July 1991. The proposal was presented to the unit employees and was rejected.

Negotiations resumed and on December 12, 1990, the Employer, by counsel, sent the union president a letter captioned ''Amendment to Company's Final Offer'' which was designed to ''summarize the clarifications we discussed at our last meeting and subsequently by telephone.'' The letter clarified three aspects of its October 12 proposal, advised that there would be no changes in the wage proposal, and concluded with the following statement:

> I will rewrite the management rights clause. It will reserve to the Company the right to manage its business in the way it sees fit and to make production decisions which it believes are economically necessary.

On December 26, 1990, the union president wrote to the Employer's counsel advising that ''the Labor Agreement was ratified 33 yes and 10 no.'' The letter made no reference to the December 12, 1990 letter or to whether the Union had accepted the clarifications of that letter. The letter closed with a request that the Employer's counsel draft the agreement or if the counsel preferred, the union president offered to ''draft up the Labor Agreement.'' Two days later, the union president wrote to all the unit employees advising them that the agreement was ''being drafted and proofread for final signature.'' On February 6, the union president again wrote counsel asking about the status of the draft and requesting that it be prepared ''as soon as possible.''

There is no dispute that the parties complied with the agreement throughout the year.

In June 1991, the Union notified the Employer that pursuant to the agreement, it desired to reopen the agreement on a limited number of matters including wages. The parties met on the reopened matters in June. On July 18, 1991, the instant petition was filed.

The Regional Director dismissed the petition under the Board's contract-bar rules. Relying on *Television Station WVTV* and *Holiday Inn of Fort Pierce*,[2] he concluded that the exchange of letters between the Employer and the Union ''is tantamount to a signature of the parties to the contract.'' In doing so, the Regional Director found that all that remained to complete the agreement was to shorten the management-rights clause and even as to that, the Union's letter of December 26 amounted to an acceptance of the language used by the Employer in his letter of December 12 concerning the management-rights clause. We do not agree.

The Board has long held that a single formal document is not required to serve as a bar to an election and that a signed exchange of written proposals and written acceptances can serve to meet the requirements of our contract-bar rule. However, the documents relied on to meet those requirements must clearly set out the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms. Such is not the case here.

The Employer's letter of October 12 presented a full collective-bargaining agreement. The union employees rejected that agreement, and on December 12 the Employer responded by sending a letter containing several amendments to its offer. That agreement was not accepted and on December 12 that proposal was amended. Although the Union's letter of December 26 noti-

[1] The name of the Union has been changed to reflect the new official name of the International Union.

[2] *Television Station WVTV*, 250 NLRB 198 (1980), and *Holiday Inn of Fort Pierce*, 225 NLRB 1092 (1976).

fied the Employer of a contract ratification, it did not indicate whether the membership ratified the offer of October 12 as originally proposed or the offer as amended by the letter of December 12. Thus, the Union's letter did not attach or incorporate by reference the specific language that purportedly constitutes the contract. Nor is it clear whether or not the Union accepted the Employer's language concerning the management-rights clause.[3]

In these circumstances, we conclude that evidence is not sufficient to establish the identity or the terms of the purported agreement.[4]

In addition, although *Appalachian Shale* indicates some willingness to honor the parties' decision to memorialize their contract through a more informal exchange of documents, 121 NLRB at 1162, the Union and the Employer here consciously did not opt for that approach. The evidence shows that they intended to prepare and execute a formal agreement, which was not accomplished before the filing of the representation petition.[5]

Accordingly, the Regional Director's conclusion that the petition is barred by an existing collective-bargaining agreement is reversed, the petition is reinstated, and the matter is remanded to the Regional Director for further appropriate action.

[3] Member Oviatt, while agreeing with his colleagues, would also find that the absence of a clear agreement on the management-rights clause precludes an agreement that would stabilize the parties' collective-bargaining relationship.

[4] It is not relevant that the parties had put into effect any or all the contracts' terms. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162 (1958).

[5] Cf. *Eicor, Inc.*, 46 NLRB 1035, 1037 (1943), in which the Board noted:

> This Board often refuses to conduct representation investigations where there are in existence valid contracts which evidence that stability of labor relations has been attained. But experience has indicated that true stability of labor relations is not obtained until collective agreements have been reduced to writing and signed.